

ORDINANCE NO. _____

AN ORDINANCE AMENDING AND REENACTING
CHAPTER 73D OF THE ROCHESTER CODE OF
ORDINANCES, RELATING TO THE REGULATION OF
VENDING CARTS.

THE COMMON COUNCIL OF THE CITY OF ROCHESTER DO ORDAIN:

Section 1. Chapter 73D of the Rochester Code of Ordinances is hereby amended and reenacted to read as follows:

Chapter 73D

Vending Carts

73D.01. Permit Required. No person shall place a Vending Cart on any public sidewalk or on any public property or the Peace Plaza without first obtaining a Vending Cart permit from the Common Council. No Vending Cart permit may be issued unless the applicant and the application complies with all requirements of this chapter.

73D.02. Definitions. "Vending Cart" means a self-contained mobile device of sufficiently lightweight construction so that it can be moved from place to place by one adult person without any auxiliary power where food and other permitted goods are dispensed to the public, either with or without charge. "Permittee" means any person issued a Vending Cart permit.

73D.03. Vending Cart Regulations. Subdivision 1. A Vending Cart permit will be issued on a first-come, first-serve basis. Notwithstanding the above provision, a person who had a Food Cart permit prior to April 23, 2011, shall be entitled to receive a Vending Cart permit before others so long as that person is continuously licensed under this chapter. Permit applications shall be submitted in person to the Office of the City Clerk and shall be time stamped. Each permit issued shall expire at midnight on December 31 of the year so issued. The permit shall be personal only and not transferable in any manner. The permit shall be valid only when used at the permit operating location designated on the permit and is valid for one cart only.

Subd. 2. A Vending Cart may not be located within 75 feet of the primary entrance of an existing street level establishment that sells similar items, unless this prohibition is waived in writing by that establishment.

Subd. 3. Carts may not be located within five feet of any crosswalk, access ramp, handicapped parking space or bus stop or in a manner that would impede access

to any adjacent business. A clear and continuous sidewalk width of five feet must be maintained at all times.

Subd. 4. A Vending Cart permit does not authorize the distribution or sale of liquor, wine or beer.

Subd. 5. A Vending Cart permit is valid from 7:00 AM to 8:00 PM, unless otherwise provided by the Council.

Subd. 6. No permit issued under this section, shall allow any permanent installation to be placed on any City sidewalk or in the Peace Plaza. No tables, chairs or other equipment, except a trash receptacle, is permitted, unless as expressly provided herein.

Subd. 7. No smoking within 15 feet of the vending cart is permitted.

Subd. 8. No more than three vending carts will be allowed in the Peace Plaza. For purposes of this chapter, Peace Plaza includes that area described in section 45D.01, subdivision 1, as well as that portion of the First Avenue SW right of way lying 200 feet to the north and south.

Subd. 9. No more than three vending carts will be allowed in the downtown area, excluding the Peace Plaza. For purposes of this chapter, the term "Downtown" is described as: Civic Center Drive on the north; Sixth Street South on the south; First Avenue West on the west and Zumbro River on the east.

Subd. 10. Vending items will be limited to: food for immediate consumption, including non-alcoholic beverages; fresh cut flowers; inflated balloons; and news publications.

Subd. 11. The vending cart area will be required to be swept and cleaned daily by the permit holder. Each Permittee is responsible for disposal of the Permittee's own trash.

Subd. 12. A Permittee must stay with the Permittee's Vending Cart and cannot promote the cart using additional signage or other means or by soliciting customers outside of the cart area. No sandwich board signs or utilization of any amplified sound systems are permitted.

73D.04. Vending Cart Design Requirements. Subdivision 1. The area occupied by the vending cart may not exceed 40 square feet.

Subd. 2. Umbrellas or canopies shall be a minimum of seven feet above the sidewalk if they extend beyond the edge of the cart.

Subd. 3. Two coolers are allowed for storage purposes, provided they fit within the 40 square feet area.

73D.05. Insurance. A Vending Cart permit is not effective until the applicant has filed with the City Clerk evidence of insurance insuring the applicant against liability imposed by law arising out of the ownership, maintenance, or operation of such vending cart in amounts of at least \$500,000 for the injury or death of one person, \$1,500,000 for the injury or death of two or more persons, and \$10,000 for damage to property. The City shall be named as an additional named insured in the policy providing such insurance. Such policy shall further provide that it may not be cancelled except upon ten days written notice filed with the City Clerk. The applicant shall also provide evidence of worker's compensation insurance coverage to the City Clerk if applicable. A Vending Cart permit is effective only if the required insurance coverage is constantly maintained and evidence of its continuance is on file with the City Clerk.

73D.06. Permit Procedures. Subdivision 1. An application for a permit under this chapter shall be filed with the City Council on forms provided by the City Clerk.

Subd. 2. The application shall require the following:

- A. The applicant's true and correct full legal name, including any former names or aliases used during the last ten years.
- B. The applicant's present residence address, telephone numbers and mailing address, if different.
- C. A scaled diagram depicting the desired vending cart location and surrounding area in sufficient detail to determine whether or not the requirements of this chapter have been met. The Council may determine the exact location where the cart may be located.
- D. A description of the proposed vending cart, including its dimensions in sufficient detail to determine if the requirements of this chapter have been met.
- E. A listing of product to be sold.
- F. A list of three persons who can attest to the applicant's honesty, good reputation and good moral character.
- G. A five year history of the applicant's felony, gross misdemeanor or misdemeanor convictions.
- H. A listing of any criminal charges currently pending against the applicant.

- I. A copy of all permits required by state or local health authorities.
- J. A certificate of insurance.

73D.07 Permit Fee. Each year at the time of filing the application for a permit, the applicant shall pay to the City Clerk the sum of \$300.

73D.08. Permit Suspension and Revocation. Subdivision 1. The City reserves the right to temporarily suspend or relocate a Vending Cart permit during a Peace Plaza or other City special event, as determined by the City Administrator.

Subd. 2. Any permit issued by the City pursuant to the provisions of this chapter may be suspended, revoked or placed on probation upon a finding that the Permittee, during the term of the permit or in connection with the application or renewal of such permit:

- A. Failed to comply with any applicable statute or ordinance relating to a Vending Cart permit.
- B. Violated any provision of chapter 73D.
- C. Failed to comply with any condition set forth in the permit, set forth in a council action regarding the permit, or set forth as part of the placement of the permit on probation; or
- D. Allowed the permitted business to be operated or maintained in a way that unreasonably annoyed, endangered or injured the safety, health, morals, comfort or repose of any considerable number of members of the public.

Subd. 3. Whenever it appears to the Council that adequate grounds may exist for the suspension, revocation or imposition or probation of a permit, the Council shall by resolution specify the nature of the alleged grounds and order that a hearing on the matter be held as provided below.

Subd. 4. No such suspension, revocation or probation shall be effective until the permit holder has been afforded an opportunity for a hearing after reasonable notice. The notice shall state the time, place and issues to be addressed. All parties will be afforded an opportunity at the hearing to present evidence and argument concerning the issues.

Subd. 5. Upon a finding that the permit holder has violated any such statute or ordinance, the council may:

- A. Suspend the permit for up to 60 days;

- B. Revoke the permit; or
- C. Place the permit on probation for a stated time period. The Council may impose conditions upon the permit during the time of probation.

Subd. 6. A permit issued pursuant to this chapter may be summarily suspended by the Council if the licensee fails to maintain insurance in the manner required by section 73D.04.

73D.09. Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor.

Section 2. This ordinance is effective as of the date of its publication.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF
ROCHESTER, MINNESOTA, THIS ____ DAY OF _____, 2011.

ATTEST: _____
CITY CLERK

PRESIDENT OF SAID COMMON COUNCIL

APPROVED THIS ____ DAY OF _____, 2011.

MAYOR OF SAID CITY

(Seal of the City of
Rochester, Minnesota)

Ord10/73D